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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 538

DUNCAN E. DAVAUT and HELEN L. DAVAUT,

Petitioners

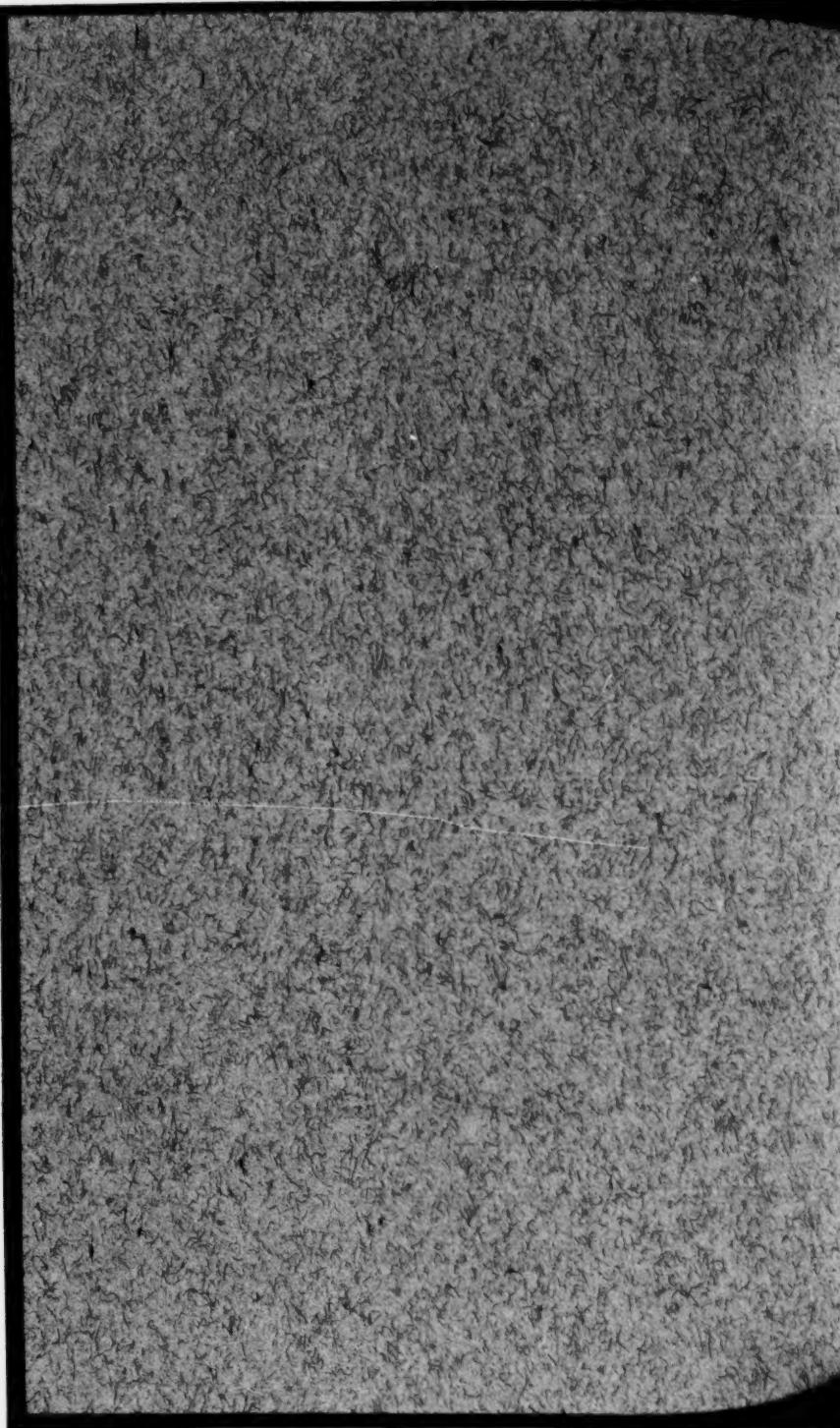
vs.

CHARLOTTE ERICKSON,

Respondent

PETITION FOR WRIT OF HABEAS CORPUS OF THE
UNITED STATES TO THE DISTRICT COURT OF
APPEAL, FOURTH APPELLATE DISTRICT OF
THE STATE OF CALIFORNIA, AND BRIEF IN
SUPPORT OF PETITION.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 538

DUNCAN E. DAVALT AND HELEN L. DAVALT,
Petitioners,

vs.

CHARLOTTE ERICKSON,
Respondent

**PETITION FOR WRIT OF CERTIORARI TO STATE
COURT**

*To the Honorable Fred M. Vinson, Chief Justice of the
United States of America, and to the Honorable the Asso-
ciate Justices of the Supreme Court of the United States:*

The Petition of Duncan E. Davalt and Helen L. Davalt for a Writ of Certiorari to be directed to the District Court of Appeal, Fourth Appellate District of the State of California, to review a Judgment of the Court entered July 24, 1947, in favor of respondent and against petitioners, respectfully shows:

I

This suit was brought to quiet title to the N $\frac{1}{2}$ of SW $\frac{1}{4}$ (Ex. N. 165 ft. of E. 279 ft.) Lot 18, N. 165 ft. of the E. 279 ft. of Lot 18, the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Lot 18, all in Rancho Ex-Mission, Horton's Pur-

chase, San Diego County, State of California; and was tried in the Superior Court of the State of California, in and for the County of San Diego, and resulted in a judgment in favor of the respondent, defendant therein, the judgment of the trial court being that petitioners, plaintiffs therein, take nothing by their said complaint, that the action was barred by the statute of limitations; (Record p. 9), and that the title thereto be quieted in defendant Erickson, Respondent herein, on her petition for affirmative relief. From the judgment, petitioners, plaintiffs therein, appealed to the Supreme Court of the State of California.

II

The Supreme Court of the State of California transferred the matter to the District Court of Appeal, Fourth Appellate District, of the State of California, said last named Court rendering the opinion, (Reported below in 80 ACA 1098, 183 Pac. (2nd) 39), a copy of which is in the record of the proceedings beginning at page 51.

Following the filing of the opinion by the Fourth Appellate District, petitioners, appellants therein, applied to the Supreme Court of the State of California, for a hearing of said matter.

III

The Supreme Court of the State of California denied the Petition of Hearing on the 18th day of September, 1947 (Record p. 55).

IV

The Supreme Court of the State of California is the highest Court of law and equity in the State of California.

V

The following is a summary and short statement of the matter involved:

This case involves the unconstitutional deprivation of real property without due process of law, a denial of the equal protection of Section 1 of Article XIII of the California Constitution, (Appendix p. 28) and of the Fourteenth Amendment of the Federal Constitution, by and through the illegal and unconstitutional actions of the County Assessor, County Tax Collector and Board of Supervisors of San Diego County; it also involves the failure of the California Courts to recognize those rights, to furnish protection, and the insistence of the California Courts that inquiries into the defects in the tax sales as herein had are barred by the California Statute of Limitations embodied in Section 3521, Revenue and Taxation Code (Appendix p. 21).

Due to the illegal exemptions of a large number of parcels of real property subject to special assessments (Pltfs. Exhibits 1-A, 1-B, and 1-E, Record pp. 46 to 48, inc.) under the provisions of Section 41, Acquisition and Improvement District Act of 1925 (Appendix p. 22) the remaining property in the district, including that of petitioners, was assessed for the entire burden of the district, causing all of the property to become delinquent, and because of the excessive and illegal burden, exceeding the assessed value of the property (Pltfs. Exhibits 1-B, Record pp. 47 and 48) it was made impossible for these petitioners to redeem from the tax sales and tax deeds to the State, resulting in sales to the Respondent herein at a greatly reduced figure (Record p. 3).

At the trial (Record p. 17), it was stipulated that plaintiffs were the owners of the land unless deprived of their ownership by virtue of respondent's tax deeds.

Objections were interposed to Respondent's tax deeds to and from the State (Record pp. 18 to 20, inc.) to the effect that they were based on illegal and invalid assessments, that the rates established were unconstitutional, unjust, illegal, and unfair and violative of Section 1, Article XIII, of the California State Constitution; that the notices were illegal and void, and that the tax deeds to the State conveyed no title; tax-title holder was not in possession of any part of the property herein.

The attention of the California Courts was also called to the holding, in the Case of *Gottstein v. Gray*, 66 Cal. App. (2nd) 587, where the Court held that inequality of tax rates was violative of the equality and uniformity required under Article XIII, Section 1, California State Constitution and of the Fourteenth Amendment of the Constitution of the United States.

The California Courts, however, held (Record p. 52) that all inquiries or protests were barred by the Statute of Limitations contained in Section 3521, Revenue and Taxation Code (See Appendix p. 21).

The title that the State received to the property herein under the tax deeds, was, pursuant to the provisions of Section 3787, Political Code, (Appendix p. 29) (now incorporated in Section 3520, Rev. and Tax Code, Appendix p. 20) as it existed in 1934 and 1935, the date of the deeds to the State, a very limited title, leaving the property subject to all special assessments collected on the tax rolls.

Under those circumstances, it is respectfully submitted that the Statute of Limitations contained in Section 3521, *supra*, does not apply, and that its application under the facts herein, is unconstitutional and repugnant to the Fourteenth Amendment of the Constitution of the United States.

VI

The reasons relied on for the allowance of the Writ are:

1. The California Courts evaded the decision on the questions of equality and uniformity under the Constitution of California and of the equal protection clause of the Fourteenth Amendment of the Constitution of the United States (Record pp. 52 and 53), by asserting that all inquiries as to constitutional defects were barred by the Statute of Limitations contained in Section 3521, *supra* (Appendix p. 21).

2. The California Courts evaded the question (Record p. 52) that these owners were deprived of their property without due process of law caused the Assessor deliberately omitting all previously tax-deeded lands from the successive years' assessment rolls, and not assessing said tax-deeded lands for each successive year as required by the provisions of Section 41, Acquisition and Improvement District Act of 1925, *supra*, thus illegally forcing the remaining property, including that of petitioners, to carry an unjust, unreasonable, illegal, and excessive burden, and, in some instances, the amounts of assessments amounting to absolute confiscation of the property.

3. The California Courts in the present case, refused and failed to consider the liability of tax-deeded lands to special assessment liens after deed to the State. California Courts have held such lands liable to special assessments:

Conley v. Hawley, 2 Cal. (2d) 23, 25;

Neary v. Peterson, 1 Cal. (2d) 703;

City Street Imp. Co. v. Regents, etc., 153 Cal. 776, 779.

4. The decision contravenes the equality, uniformity, and equal protection clauses of Article XIII, Section 1, of

the California Constitution and of the Fourteenth Amendment of the Federal Constitution (Record p. 53).

5. It is in conflict with the recent decision of the California State Supreme Court, decided December 16, 1947, in the case of *Tannhauser v. Adams*, reported in 31 AC 167; with the decision of this Honorable Court in the case of *Bird v. Benlisa*, 142 U. S. 664, and with cases decided in other jurisdictions.

VII

The Statute believed to sustain the jurisdiction of this Honorable Court to review the judgment herein is Section 237(c) of the Judicial Code; 28 U. S. C. A., Sec. 344 (a & b) and the cases of *Cheseboro v. Los Angeles County Flood Cont. Dist.*, 306 U. S. 459; *Pierre v. State of Louisiana*, 306 U. S. 354; *Collier v. Goessling*, 215 U. S. 596; *Wilson v. Cook*, 327 U. S. 474; *Slater v. Maxwell*, 73 U. S. 268; *Charleston, etc., v. Alderson*, 324 U. S. 182; *Broad River, etc. v. So. Carolina*, 281 U. S. 537; *Covell v. City of Griffin, Ga.*, 58 S. Ct. 666, 82 L. Ed. 580; *Lawrence v. State Tax Comm.*, 286 U. S. 276; *So. Pac. Co. v. State of Arizona*, 325 U. S. 761; *Miller v. Schoene*, 276 U. S. 272.

VIII

Your petitioners present to this Court, and file herewith, as an exhibit hereto, a duly certified transcript of the entire record of the case, as the same appears in the District Court of Appeal, Fourth Appellate District of the State of California.

WHEREFORE, your petitioners pray that a Writ of Certiorari may be issued out of and under the seal of this Court to the District Court of Appeal, Fourth Appellate District, of the State of California, to the end that the judgment of

the District Court of Appeal, Fourth Appellate District of the State of California may be reviewed by this Honorable Court.

Respectfully submitted,

DUNCAN E. DAVALT and

HELEN L. DAVALT,

Petitioners,

By SOLON S. KIPP,

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By EUGENE W. MILLER,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 538

DUNCAN E. DAVALT AND HELEN L. DAVALT,
Petitioners,

vs.

CHARLOTTE ERICKSON

BRIEF IN SUPPORT OF PETITION

I

Statement of the Case

This has already been stated in paragraph V of the preceding petition (pp. 3 to 4, inc.), which is hereby adopted and made a part of this brief.

II

Specification of Errors

Does Section 3521, California Revenue and Taxation Code (Appendix p. 21) apply, where the proceedings leading up to the deed to the State were void and invalid on jurisdictional and constitutional grounds?

Argument

At the trial, it was proven that the last year's delinquent and unpaid taxes and assessments for the years 1934 and 1935 were not advertised as required by law (Record p. 33 & 34, Pltfs. Exhibit No. 8; Record p. 38, Pltfs. Exhibit No. 9) that certain lands were not included when the assessments in the Special Districts were made (Record pp. 46 to 48, inc., Pltfs. Exhibits 1-A, 1-B, and 1-E) and that the amounts were therefore excessive, illegal, unreasonable, unfair, unequal, and unconstitutional; that the demands thus made were excessive as stated in the notices, that therefore, the notices were void; that the amounts being excessive, the tax collector lacked the power to sell the land and that where the levies were excessive, the State received no title to the land and could therefore convey no more.

The California Court, however, held (Record p. 53) that Section 3521, California Revenue and Taxation Code (Appendix p. 21) was applicable and barred all inquiries, even though the proceedings were invalid and void on jurisdictional and constitutional grounds.

We respectfully submit that this Honorable Court will agree that the statute of limitations cannot be applied in cases where the taxes have been paid; where there were two tax deeds issued on the same property on the same day and for the unpaid County taxes for the same year. These matters have been adjudicated in many jurisdictions, and we believe that no cases are required thereunder.

We further respectfully submit that the statute of limitations cannot be applied in cases where a tender was made of the legal tax and the receiving officer refused to accept the same; or where, if a tender had been made of the correct amount of the taxes and assessments, the proper redemption officer would have refused the same; or where the notices are defective and illegal or no notice given at

all; or where the levies were so excessive, illegal, unfair, unequal, or unconstitutional that the tax collector lacked the power to sell and where no title passed to the State by his purported deed; or where the tax title purchaser is not now, nor ever was, in possession of the premises under his tax deed.

POINT I

The statute of limitations does not apply where the proceedings leading up to the tax deed to the State are void on jurisdictional grounds:

A. For lack of proper description:

Bird v. Benlisa, 142 U. S. 664;
Frates v. Whitson, 155 Pac. (2nd) 536;
Hunt v. Dekin, 64 N. Y. S. 2nd, 187.

B. Where the proper notices were not given:

Elliott v. Clement, 149 Pac. (2nd) 985, and 151 Pac. (2nd) 739;
Frederick v. Douglas, 155 Pac. (2nd) 925;
Baker v. Roger, 1 Pac. (2nd) 366 (148 Okla. 279);
Neilan v. Unity Invest. Co., 147 Ia. 667 (126 NW 947);
Shelley v. Smith, 97 Ia. 259 (66 NW 172);
Rock Island Imp. Co. v. Davis, 159 Pac. (2nd) 728;
Miller v. Murphy, 175 Pac. (2nd) 182;
Smith v. Huber, 224 Iowa, 817 (277 NW 557);
Parker v. Norton, 26 NW 2 453;
Olds v. City of Jamestown, 20 NE (2nd) 756;
Stockwell v. Curtis, 279 Mich. 388;
Timms, et al., v. Scott, 27 So. (2nd) 487;
Campbell v. McGrath, 117 Okla. 126, 127;
McAfee v. Harden, 71 Pac. (2nd) 463, 464;
Small v. Hull, 96 Mont. 525.

C. Where the amount of the demand for taxes or for the assessments was illegal and excessive, or unauthorized:

Lumsden v. Erstine, 172 SW (2nd) 409;

Plant v. Johnson, 185 SW (2nd) 711;

Noe v. Schuman, 198 SW (2nd) 510.

D. The statute of limitations does not apply where the former owner is not out of possession:

Tannhauser v. Adams, 31AC 167. (Cal. 1947);

Meigs v. Roberts, 162 NY 371.

In the *Meigs v. Roberts* case, on page 379, the New York Court said:

“It is questionable whether as to an owner in actual possession of land the record of a hostile conveyance in the clerk’s office is sufficient to set a statute of limitations running against him so as to destroy his title.”

See also: 51 American Jurisprudence, Sections 1158, p. 997, and 1160, p. 1000.

In Section 1160, the authors of American Jurisprudence say:

“When, however, the tax deed is void on jurisdictional grounds either upon its face or because of a fatal infirmity in the tax sale proceedings, it is everywhere held, even in states in which possession for the requisite period under a tax deed void on its face will operate as a bar, that the statute will not operate in favor of a void tax deed unless actual possession is taken thereunder.”

See also:

Cooley on Taxation, Vol. 4, 4th Ed. Sec. 1513.

“So long as the original owner of land which has been sold for taxes remains in undisturbed possession of it, the statute of limitations does not run against

him or prevent the maintenance of a suit to set aside the tax sale or remove the cloud on his title."

Lind v. Stubblefield, 282 Pac. 265, 367 (138 Okla. 280).

See also:

34 Am. Jur. p. 29.

Plant v. Johnson, 185 SW (2nd) 711.

E. The statute of limitations does not apply where the tax deed is void on other jurisdictional grounds, whether former owner is in or out of possession:

"It is elementary that no prescription can operate against a sale that is an absolute nullity." *Atkins v. Simpson*, 28 So. (2nd) 769, 771, 772.

Also:

Pride v. Gist, 152 Ark. 368 (238 SW 35).

"The power to sell is defeated by the excessive charge; so the confirmation proceedings could not cure the defect of excessive charges, because the excessive charges defeated the power to sell. To say that the confirmation proceedings in 1936 cured the illegal taking of property for an excessive charge in 1930, is the same thing as to say that the breath of life can be breathed back into a corpse after a lapse of years."

Lumsden v. Erstine, 172 SW (2nd) 409, 412, 413.

on void proceedings, see also:

Helterline v. People, 295 NY. 245, 140 A. L. R. 955 (Citing *People v. Chicago & Eastern Ill. Ry. Co.*, 365 Ill. 202, 6 NE (2nd) 119).

See also:

Eastland v. Yazoo Delta Lbr. Co., 90 Miss. 330 (43 So 956);

Bradshaw v. Brady, 38 SD 279 (161 NW 195).

Kingore v. Wallace et al., 276 Pac. 332;

Powell v. Turpin, 29 SE (2nd) 26;

Kennedy v. Sanders, 43 So. 913.

POINT II

The Tax Collector lacked the necessary power to sell because of the inequality in the rates of assessments in the Improvement Districts, and because the demands were excessive, unjust, unfair, illegal, and unconstitutional.

A. Tax deeded lands are subject to special assessments. Section 3520, California Revenue and Taxation Code (Appendix p. 20) and Section 3787, Political Code (Appendix p. 29) as it read when the deeds here were issued, read, in part:

“A deed to the state conveys to the state the absolute title to the property free of all encumbrances, EXCEPT, among others:

Liens for special assessments collected on tax rolls.”

And the assessor was required to assess the tax deeded lands for special assessments under the provisions of Section 41, Acquisition and Improvement District Act of 1925 (Appendix p. 22).

That section states the law to be that the general assessment roll shall be the basis of the assessment, *unless* property not subject to general taxation does not appear thereon. In that case, the law says (Appendix p. 24) the value of the real property of said lands not appearing on the assessment roll should be ascertained in the same manner as in the case of other lands.

See:

Conley v. Hawley, 2 Cal. (2nd) 23, 25;
City Street Imp. Co. v. Regents, etc., 153 Cal. 776, 779;
City of Pasadena v. Chamberlain, 1 Cal. App. (2nd) 125, 132.

B. The deliberate omission from the assessment rolls of these tax-deeded lands created excess levies on the remain-

ing lands that were assessed which were unequal, unfair, unjust, and unconstitutional.

The assessor omitted the tax-deeded lands from the assessment roll (Pltfs. Exhibits 1A, 1C, 1E, Record pp. 46 to 48 inc.)

"The Constitutional requirements of equality and uniformity is violated by imposing a tax on one portion of the State for the benefit of the whole State, or on one portion of the County for the benefit of the whole County, or on one part only of a taxing district. This is what seems to have been done in this case, rendering the tax invalid." *Redman v. Warden*, 92 Cal. App. 636, 638.

"The difference in the rate of assessment for curbing and paving in the block between Vincente and Ullva Streets of \$.012378 in excess of that in other blocks is small, but in proceedings in invitum, small departures from the lawful procedure are fatal to the assessment." *Federal Const. Co. v. Newhouse*, 186 Cal. 284, 286.

"If the line which the legislature has established be once passed, we know of no boundary to the discretion of the assessors." *Cooley on Taxation*, 4th Ed. Vol. 3, p. 2093, Sec. 1032.

See also:

People v. Lunch, 51 Cal. 15;
Baker v. Kaiser, 126 Fed. 317;
Noe v. Schuman, 198 SW (2nd) 510;
Lumsden v. Erstine, 172 SW (2nd) 409;
Gottstein v. Gray, 66 Cal. App. (2nd) 587.

In the latter case, the Court, speaking of the lack of uniformity of tax rates, said, on page 593:

"The constitutional requirement that the property shall be taxed in proportion to its value necessarily applies to the *rate* of taxation as well as to the matters of valuation * * *. But under the method pursued

by the board there was not the equality and uniformity which is required by Article XIII, Section 1, of the State Constitution, and the Fourteenth Amendment of the Constitution of the United States."

"The intentional omission of property by the assessors, thereby eliminating it from taxation, vitiates the whole tax." *Desty on Taxation*, Sec. 644.

"It results that the assessment was improperly made; that it omits a lot which should have shared the burden with the one sought to be charged. Such being the case the assessment is void." *Diggins v. Brown*, 76 Cal. 318, 322.

See also: *Redman v. Weisenheimer*, 102 Cal. App. 488, 491, 140 A.L.R. 1004.

"Proceedings for sale of property for taxes should be closely scrutinized and whenever it has been characterized by fraud or unfairness, should be set aside or purchaser be required to hold title in trust for owner." *Slater v. Maxwell*, 73 U. S. 268.

C. The levies being excessive, the notices of sale were therefore illegal and constituted no notice at all.

It was proven at the trial that the property for each year was excessively assessed for the levies in the Special Districts. (Pltfs. Exhibit 1-C, Record p. 47). These excessive demands were carried into the notices rendering them void and of no force and effect.

"To comply with the statute, the exact amount must be given. A deviation, however small, is fatal, because a rule of law cannot be made to fluctuate according to the degree or extent of its violation." *Warden v. Broome*, 9 Cal. App. 172, 174.

See also: *Simmons v. McCarthy*, 118 Cal. 622, 625;
Miller v. Williams, 135 Cal. 183, 184;
Warden v. Ratterree, 215 Cal. 215, 217;
People v. Hagadorn, 104 N. Y. 516;

Hardenburgh v. Kidd, 10 Cal. 402;
Helterline v. People, 295 N. Y. 245;
Hassan v. City of Rochester, 67 N. Y. 528.

POINT III

The California Court refused to discuss or decide petitioners' constitutional rights and by its ruling held that the statute was not repugnant to the Constitution. A Federal question is thus presented and this Honorable Court has jurisdiction and may make full inquiry by an independent examination of the facts.

Charleston v. Alderson, 324 U. S. 182;
Demorest v. City Bank Co., 321 U. S. 36;
Broad River Power Co. v. State of So. C., 281 U. S. 537;
Lovell v. City of Griffin, Ga., 58 S. Ct. 666, 82 L. Ed. 949;
So. Pac. Co. v. State of Arizona, 325 U. S. 761;
Miller v. Schoene, 276 U. S. 272;
Norris v. State of Alabama, 294 U. S. 587;
Wilson v. Cook, 327 U. S. 474.

Cases from Other Jurisdictions Do Not Apply

We are not unmindful of the cases of *Meigs v. Roberts*, 162 N. Y. 371, 56 N.E. 838; *Saranac Land, etc., Co. v. Comptroller of New York* (1899), 177 U. S. 318, 20 S. Ct. 642, 64 L. Ed. 786, and *Turner v. New York*, 168 U. S. 90, 18 S. Ct. R. 38, but respectfully submit that those cases are not applicable for the reason that they were decided on the basis of a New York Statute which gave the State of New York the absolute possession of the land as of the date of the recording of the deed to the State and the Statute of Limitations began to run as of that date. Neither does the recent decision of the California Supreme Court in the case of *Tannhauser v. Adams*, reported in 31 A. C. 167 (1947),

apply under the circumstances here set forth because in that case the tax title purchaser was also in possession of the premises and the former owner out of possession.

Redemption Was Illegally Terminated

There was presented to the Appellate Court, Fourth Appellate District, photostatic copies of actual redemption estimates issued by the Auditor of San Diego County, State of California, for properties in districts created under the same act here discussed. (Copies of said estimates are filed herewith as petitioners' exhibits).

As will be seen from the estimates, the demand for one parcel, assessed at \$1,720.00, was the sum of \$366,362.27; for another parcel, assessed at \$100.00, the demand was for \$40,187.92; while another parcel, assessed at \$7,390.00, the demand was the staggering sum of \$1,648,446.40.

This situation existed in practically every district in the State of California where the act was put into operation and reflects more clearly the results which follow the illegal actions of the taxing authorities in leaving off property which is subject to the assessment.

It would be futile, under the circumstances, for an owner to offer to redeem, or attempt to redeem. The excessive figures constituted, therefore, an illegal and unconstitutional termination of the right of redemption.

As will be seen from the estimates, the properties were deeded to the State on July 1, 1936.

Can it be said that the Statute of Limitations should be invoked in order to prevent an inquiry into those proceedings?

Conclusion

From the record presented as to the illegal and unconstitutional levies in the districts, it is apparent that the results constitute an illegal and unconstitutional confiscation of

property, and that the tax collector never had the power to sell the lands under the circumstances and that it follows that the State never had a title which it could convey.

Respectfully submitted,

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By: EUGENE W. MILLER,
Attorneys for Petitioners.

APPENDIX

3520. Effect on "Tax Liens." As used in this section, "lien" includes any lien for:

(a) Interest and penalties or both on taxes or special assessments or both.

(b) Amounts payable to cities or for their account on redemption of property from sale for taxes, special assessments, or other amounts.

The deed conveys to the State the absolute title to the property, free of all encumbrances, except:

(1) Liens for taxes levied for municipal, irrigation, reclamation, protection, flood control, public utility or other district purposes, not included among those taxes and assessments for delinquency in the payment of which the property is conveyed to the State.

(2) Liens for special assessments collected on tax rolls.

(3) Liens or assessments for other amounts which by law are collected on tax rolls by or for account of cities.

(4) Easements constituting servitudes upon or burdens to the property; water rights, the record title to which is held separately from the title to the property; and restrictions of record.

Where the tax collector executes a single deed conveying property to the State for the delinquent taxes and assessments of the county and of revenue districts, the tax and assessment liens of such revenue districts are extinguished by the conveyance to the State and are not included in the exceptions enumerated in subparagraphs (1), (2) and (3) of this section. Each such revenue district, however, shall retain an equitable lien in the property and there shall be paid by the county to each such district its pro rata share of the proceeds of any resale by the State, or redemption from the State, and such lien and right shall be terminated in the manner and at the time that the county's rights in the property are terminated.

When the land is owned by the United States or this State, the deed is prima facie evidence of the right of possession

accrued as of the date of the deed without prejudice to the taxes or assessments which are a lien upon the property. (Calif. Stats. 1941 p. 2463).

3521. Statute of Limitations. A proceeding based on an alleged invalidity or irregularity of any deed to the State for taxes or of any proceedings leading up to the deed can only be commenced within one year after the date of recording of the deed to the State in the County Recorder's office or within one year after June 1, 1941, whichever is later. (Calif. Stats. 1941 p. 1426).

3725. Contesting Validity. A proceeding based on alleged invalidity or irregularity of any proceeding instituted under this chapter can only be commenced within one year after the date of execution of the tax collector's deed. (Calif. Stats. 1939, Ch. 539).

Revenue and Taxation Code (as it existed in 1944 when the Deeds by the State herein were issued).

3704. Contents of Notice. The notice of intended sale shall state:

- (a) The time and place of the intended sale;
- (b) A description of the property to be sold;
- (c) The name of the assessee of the property for each year in which there may be delinquent taxes against the property or any part of it;
- (d) If the right to redeem the property has not already been terminated, there shall also be a statement that if the property is not redeemed before it is sold, the right of redemption will cease. (Stats. 1939, Chap. 154, in effect February 1, 1941.)

ACQUISITION AND IMPROVEMENT ACT OF 1925

(Also Known as the "Mattoon" Act)

(Approved May 23, 1925; Stats. 1925, p. 849; Amended 1927, Chapters 732, 858 and 870, Stats. 1927)

Payment of Bonds; Levy of Special Assessment Taxes, Exclusion of Property from District Assessment of Property, Duties of Officers. (Amended, Stats. 1927, Chap. 732).

Sec. 41. For each district in which bonds have been issued under the provisions of this act a special fund to be named "Acquisition and improvement district No. of the county (or city) of interest and sinking fund" (the number to be that of the district) for the discharge and payment of such bonds, whether issued for an acquisition or improvement, or both, and interest thereon, shall be constituted by the county or municipality (as the case may be) whose legislative body has conducted the proceedings, as follows, to-wit: In case the district is entirely within one municipality there shall each year at the time of levying taxes for general municipal purposes be levied by the legislative body of such municipality against and upon all of the lands within said district a special assessment tax in an amount clearly sufficient, together with any moneys which are or may be in said fund, to pay all the principal which has become or will become payable and all interest which has become or will become payable on the bonds issued under the proceeding before the proceeds of another tax levy made at the time of the next general tax levy for general municipal purposes can be made available for the payment of said principal and interest. In case the district is entirely within unincorporated territory of the county, or partly within unincorporated territory of the county, and partly within one or more municipalities, or within two or more municipalities, there shall each year at the time of the general tax levy for county taxes be levied by the board of supervisors against and upon all the lands within said district a special assessment tax, in an amount clearly sufficient, together with any moneys which are or may be in

said fund, to pay all the principal which has become or will become payable and all interest which has become or will become payable on the bonds issued under the proceeding before the proceeds of another tax levy made at the time of the general tax levy for county purposes can be made available for the payment of said principal and interest. The lands within any such district shall include any land which is the operative property of any public utility and include any lands belonging to any county, municipality, district, public agency, mandatory of the government, school board, educational, penal or reformatory institution or institution for the feeble-minded or insane, whether being used in the performance of a public function or not, unless declaration was made in the resolution of intention omitting any of said lands from the assessment to be made; but shall not include any lands belonging to the United States government or to the State of California. If the said district has been divided into zones and the percentage of the expenses to be raised from each such zone has been determined, as provided in this act, in that event the said amount of said special assessment tax to be levied shall be divided according to said percentages and the percentage to be raised from the lands in each zone shall be levied against and upon the lands therein as above provided.

In case the district is entirely within one municipality, the assessment roll for general municipal taxes of such municipality shall be the basis for the levy and computation of said tax (except as to property not assessed thereon), and in case the district lies entirely within unincorporated territory of the county, or partly in unincorporated territory of the county and partly within one or more municipalities, or within two or more municipalities, the county assessment roll for general county taxes shall be the basis for the levy and computation of the tax (except as to property not assessed thereon). Such special assessment taxes shall be in addition to all other taxes levied for county purposes or for municipal purposes, as the case may be, and shall be levied, computed, entered, collected and enforced in the same manner and by the same persons and at the same time and with the same penalties and interest as are other taxes for county purposes or for municipal purposes, as the

case may be, and all laws applicable to the levy, collection and enforcement of taxes for county purposes or for municipal purposes, as the case may be, are hereby made applicable to said special assessment tax.

It shall be the duty of the county assessor or the city assessor, as the case may be, to assess, exclusive of any improvements thereon, all lands heretofore in this section mentioned (if any there may be in any assessment district formed under this act) not otherwise assessed for purposes of general county taxes or general taxes of a municipality, as the case may be, against which such special assessment taxes are to be levied. The assessment of such lands (if any such there be in the district) shall be made at the same time and in the same manner and by the same persons as the assessment for general county taxes or general taxes of a municipality, as the case may be, and shall be equalized at the same time and in the same manner and by the same persons as such general county taxes or general taxes of a municipality are equalized. And the official or officials who are required to give notice of the equalization of the general county assessment roll or the general municipal assessment roll, as the case may be, shall give notice to all persons interested, for the same time and in the same manner as that given on the equalization of said general assessment rolls, of the equalization of assessments of such lands for the purpose of taxing the same to pay the principal and interest of bonds issued under this act. Said lands need not be described in said notice, but it shall be sufficient to state therein that the lands assessed include all lands in certain acquisition and improvement districts, designating them by their proper names, which are not assessed on the general county or municipal assessment roll, as the case may be, but are subject to assessment under the proceedings creating said assessment districts. At said hearing all persons interested in any lands in said districts may appear and be heard upon any matter of equalization affecting any lands within such districts, and the notice of equalization shall so state.

In the event that there is included within such district any land belonging to any county, municipality, district, public agency, mandatory of the government, school board,

educational, penal or reformatory institution or institution for the feeble-minded or insane, and which is being used in the performance of a public function, and no declaration was made in the resolution of intention omitting such land from the assessment to be made, the amount of the special assessment tax levied each year against said land, as above provided, shall be an enforceable obligation against the owner of or the governing body controlling said land, and it shall be the duty of the officer or body having charge of the disbursement of the funds of the owner of said land to pay the amount of said special assessment tax levied, from any of the funds thereof available, immediately upon its becoming due. If for any reason there are no moneys in any of such funds, then the county or municipality, as the case may be, whose legislative body conducted the proceedings shall pay said special assessment tax against said land and the said owner or governing body controlling said land shall reimburse such county or municipality immediately upon the receipt of sufficient moneys in any of its available funds. In all cases in which sufficient funds are not available to make such reimbursement before the time of another tax levy, the board or officers whose duty it is to levy taxes for said owners shall include in the next tax levy an amount, in addition to moneys for all other purposes, sufficient to reimburse said county or municipality.

The legislative body of the county or municipality, as the case may be, which conducted the proceedings for the acquisition or the improvement, or both, may annually at or prior to the time said tax levy is made, transfer from the general fund of such county or municipality or from any fund which may be used for acquisitions or improvements of a similar character to those made under the proceeding, to the interest and sinking fund above provided for, such amount as in the judgment of said legislative body should be transferred. It is the intention of this provision that further assistance in addition to that, if any, provided for in the resolution of intention and that which may be given as elsewhere provided in this act, may be given by such county or municipality toward the payment of the expenses of the thing or things done under the proceedings after bonds for said expenses shall have been issued and sold, and

apart from the loans, and apart from the advances under the revolving fund elsewhere in this act provided.

In any event, it shall be the duty of the legislative body, which is required by this section to levy the special assessment tax, to levy a special assessment tax upon all of the said lands within such district clearly sufficient to pay the principal and interest of said bonds as the same shall become payable, and said legislative body is hereby vested with power and jurisdiction to do all and singular the things which in this section aforesaid it is declared shall be done by it. Whenever any of said bonds or any payment of principal or interest thereon shall become due and there shall not be sufficient money in said interest and sinking fund to pay the same, the legislative body which conducted the proceeding may, pending the levy and collection of a special assessment tax therefor, order the amount of money necessary to pay said bonds, or payment of principal or interest so falling due, to be transferred from the general fund of the county or municipality, as the case may be, to said interest and sinking fund, and the amount of money so transferred shall be deemed a loan to said interest and sinking fund and shall be repaid to the general fund from the first money coming into said interest and sinking fund thereafter. Any money remaining in any acquisition and improvement district interest and sinking fund after all of the bonds of the district have been retired shall be transferred to the general fund of the county or municipality, as the case may be, whose legislative body conducted the proceeding and may by said body be used in repairing any public way in said district, regardless of whether a portion or all of the district as originally formed may have been included within one or more municipalities which did not include such portions or all of the district at the time the proceedings for the same were initiated.

In all cases in which the proceeding is conducted by the legislative body of a municipality where the taxes are required by this action to be levied by the board of supervisors of the county, the clerk of the legislative body conducting the proceeding, in addition to transmitting to the treasurer of such municipality an attested copy of any order

or orders for the issuance of bonds in the proceeding, shall transmit to the legislative body of the county a certified copy of such order or orders for the issuance of bonds, together with certified copies of the resolution of intention and of the resolutions and orders in which are set forth the boundaries of the district, the number of zones, if any, and the percentage to be raised from each zone, as said matters were finally determined, and shall also transmit to such legislative body a certified copy of the map of the assessment district showing the boundaries of the district and of the zones therein, if any, as finally determined, and upon the filing with such legislative body of said certified copies it shall thereupon have jurisdiction and the other officers of the county shall have jurisdiction and it shall be their duty to take the steps required in this section for the assessment, levy, computation, entry, collection and enforcement of such special assessment taxes.

In all cases in which the legislative body of a municipality conducted the proceedings, and the county officials levy and collect the taxes, as hereinbefore provided, the proper officers of said county upon collecting the taxes aforesaid shall, not later than the thirtieth day of each month in which said taxes are collected, transmit the same to the city treasurer of the municipality, the legislative body of which conducted the proceedings, together with a statement of the amounts delinquent in each such district, if there be any delinquencies. *Provided, however,* that nothing in this section shall be construed as requiring the city officials of any municipality which has availed itself of the provisions of any law permitting the duties of city officials relating to the assessment, collection and enforcement of taxes to be performed by county officials, to perform any of the duties herein prescribed relating to the assessment, collection and enforcement of taxes which are performed for said city by county officers, and the taxes required to be levied hereunder shall be assessed, collected and enforced by the persons who perform such duties for said city.

CALIFORNIA CONSTITUTION

ARTICLE XIII

(Revenue and Taxation)

Section 1. All property in the State except as otherwise in this Constitution provided, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law, or as herein-after provided. The word "property," as used in this article and section, is hereby declared to include moneys, credits, bonds, stocks, dues, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership; provided, that a mortgage, deed of trust, contract, or other obligation by which a debt is secured when land is pledged as security for the payment thereof, together with the money represented by such debt, shall not be considered property subject to taxation; and further provided, that property used for free public libraries and free museums, growing crops, property used exclusively for public schools, and such as may belong to the United States, this State, or to any county, city and county, or municipal corporation within this State shall be exempt from taxation, except such lands and the improvements thereon located outside of the county, city and county or municipal corporation owning the same as were subject to taxation at the time of the acquisition of the same by said county, city and county or municipal corporation; provided, that no improvements of any character whatever constructed by any county, city and county or municipal corporation shall be subject to taxation. All lands or improvements thereon, belonging to any county, city and county or municipal corporation, not exempt from taxation, shall be assessed by the assessor of the county, city and county or municipal corporation in which said lands or improvements are located, and said assessment shall be subject to review, equalization and adjustment by the State Board of Equalization. The Legislature may provide, except in the case of credits secured by mortgage or trust deed, for a deduction

from credits of debts due to bona fide residents of this State (Amendment adopted November 3, 1914).

POLITICAL CODE OF THE STATE OF CALIFORNIA

Tax Deed Is Conclusive Evidence of Regularity of Proceedings and Conveys Title Free of Encumbrances Except Certain Liens and Assessments.

3787. Such deed, duly acknowledged or proved, is (except as against actual fraud) conclusive evidence of the regularity of all other proceedings, from the assessment of the assessor, inclusive, up to the execution of the deed. Such deed conveys to the state the absolute title to the property described therein, free of all encumbrances, except any lien for taxes levied for municipal, or for irrigation, reclamation, protection, flood control, public utility or other district purposes, or for special assessments which are collected on tax rolls, and except any lien or assessment for other amounts which by law are collected upon tax rolls by or for account of municipalities, and except interest and penalties on the same, and other amounts which would be paid municipalities or for their account in the event of redemption of such property from sales for such taxes, assessments or other amounts, and except when the land is owned by the United States or this state, in which case it is prima facie evidence of the right of possession accrued as of the date of the deed to the state but without prejudice to the lien for such other taxes or assessments or amounts or to the claim of the municipality for such interest, penalties and other amounts. (Statutes 1927, p. 1666; in effect July 30, 1927.)